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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,868	04/09/2008	Lutz Barich	PR-80PCT	3660
40570	7590	12/10/2008		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER SINGH, SUNIL	
			ART UNIT 3672	PAPER NUMBER
			MAIL DATE 12/10/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/560,868

Applicant(s)

BARICH ET AL.

Examiner

Sunil Singh

Art Unit

3672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are confusing because it is not clear if the wall element is being claimed.

For example, claim 1 states that the wall element can be inserted. This means it is not required.

Claim 1, "wherein between always too" is grammatically awkward and confusing.

Claim 2 is similarly rejected as claim 1 above.

Claims 3-6, "the extension support post" lacks clear antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over German document '449 in view of British document '068 and Fish '774 or French document '325.

German document discloses flood protection wall, with ground anchors (1) to be embedded in concrete flush with the ground surface, and with support posts (3) releasably connectable to the ground anchors, with a coupling piece (2) each between the support posts 3 and the ground anchors (1), wherein the respective coupling piece (2) is connectable to the ground anchor (1) by a bayonet-type connection, and wherein the coupling piece (2) has a transverse bore which is conically widened at both ends thereof, and wherein in these conically widened portions which continue in oppositely located conical transverse bores of the support post (3), a clamping piece (4,5) each is received, wherein these clamping pieces (4,5) tighten in a frictionally engaging manner the support posts (3) in the ground anchor (1) within the bayonet-type closure by means of a screw which is actuatable by means of an appropriate special wrench and clamp the support post (3) against the ground anchor (1). German document discloses the invention substantially as claimed. However, German document is silent about having between two support posts a wall element which is bulging out toward the high water level. British document teaches having grooves on posts to retain wall elements (see Figs. 10, 13). Fish and French document '325 both teach wall elements bulging outwardly (see Figs. 3, 2 respectively). It would have been considered obvious to one of ordinary skill in the art to modify German document to include grooves on the posts to retain wall elements as taught by British document and to include wall elements that bulge outwardly as taught by either Fish or French document '325 in order to provide a flood barrier that can withstand a desired flood water force.

With regards to claim 2, it would have been considered obvious modify German document to provide an extension support post, additional coupling piece, clamping pieces, screw means and additional wall elements since it has been held that mere duplication of the essential working parts of a structure involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It should be noted that such a modification enables one to adjust the height of the flood barrier in accordance with the level of the flood water expected.

Re claim 4, cover (see Fig. 13 of German document).

Re claim 7, sealing means (40, see British document).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sunil Singh/
Primary Examiner, Art Unit 3672

Sunil Singh
Primary Examiner
Art Unit 3672

SS
12/4/08